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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,746	08/23/2001	Gabriela Chiosis	64987/JPW/GJG	4095

7590

12/26/2002

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EXAMINER

WEDDINGTON, KEVIN E

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/938,746

Applicant(s)

Chiosis et al.

Examiner
Kevin E. Weddington

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1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 9, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-23, 25-34, 42, 61, and 71-109 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-23, 25-34, 42, 61, and 71-109 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 6) ☐ Other: _____

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CLAIMS 1-4, 6-23, 25-34, 42, 61 AND 71-109 ARE PRESENTED FOR EXAMINATION.

APPLICANTS' PRELIMINARY AMENDMENTS FILED AUGUST 23, 2001 AND FEBRUARY 11, 2002 HAVE BEEN RECEIVED AND ENTERED.

APPLICANTS' ELECTION FILED SEPTEMBER 9, 2002 IN RESPONSE TO THE RESTRICTION REQUIREMENT OF JULY 5, 2002 HAS BEEN RECEIVED AND ENTERED. THE APPLICANTS ELECTED THE INVENTION DESCRIBED IN CLAIMS 1-4, 6-23, 25-34, 42, 61, 72-78, 83-85 AND 87-102 (GROUP I) WITH TRAVERSE.

APPLICANTS' TRAVERSE OF THE RESTRICTION REQUIREMENT IS FOUND PERSUASIVE, THEREFORE, GROUPS I AND II CAN BE SEARCHED TOGETHER.

SINCE THE APPLICANTS' ELECTED AGENT OF FORMULA S-PRO-CN CANNOT BE SEARCHED BECAUSE THE "N" VALUE IS MISSING. THE OTHER AGENT AS DISCLOSED IN CLAIM 86 AND 103 WILL BE SEARCHED.

CLAIM REJECTIONS - 35 U.S.C. § 112

CLAIMS 4, 23, 85 AND 102 ARE REJECTED UNDER 35 U.S.C. 112, FIRST PARAGRAPH, AS CONTAINING SUBJECT MATTER WHICH WAS NOT DESCRIBED IN THE SPECIFICATION IN SUCH A WAY AS TO ENABLE ONE SKILLED IN THE ART TO WHICH IT PERTAINS, OR WITH WHICH IT IS MOST NEARLY CONNECTED, TO MAKE AND/OR USE THE INVENTION.

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APPLICANTS' SPECIFICATION DOES NOT DISCLOSE THE "N" VALUE IN THE FORMULA
S-PRO-CN

CLAIMS 4, 23, 71, 85 AND 102 ARE REJECTED UNDER 35 U.S.C. 112,
SECOND PARAGRAPH, AS BEING INDEFINITE FOR FAILING TO PARTICULARLY POINT OUT AND
DISTINCTLY CLAIM THE SUBJECT MATTER WHICH APPLICANT REGARDS AS THE INVENTION.

CLAIMS 4, 23, 85 AND 102 ARE RENDERED VAGUE AND INDEFINITE BECAUSE THE
APPLICANTS DID NOT DISCLOSE THE MEANING OF THE FORMULA S-PRO-CN. THE
APPLICANTS DID NOT DISCLOSE WHAT IS MEANT BY "PRO" AND THE APPLICANTS DID NOT
DISCLOSE THE "N" VALUE TOO. CLAIM 71 IS RENDERED INDEFINITE BECAUSE THE CLAIM
DEPENDS UPON CANCELED CLAIM 69.

CLAIM REJECTIONS - 35 U.S.C. § 103

THE FOLLOWING IS A QUOTATION OF 35 U.S.C. 103(A) WHICH FORMS THE BASIS
FOR ALL OBVIOUSNESS REJECTIONS SET FORTH IN THIS OFFICE ACTION:

(A) A PATENT MAY NOT BE OBTAINED THOUGH THE INVENTION IS NOT IDENTICALLY DISCLOSED OR DESCRIBED
AS SET FORTH IN SECTION 102 OF THIS TITLE, IF THE DIFFERENCES BETWEEN THE SUBJECT MATTER
SOUGHT TO BE PATENTED AND THE PRIOR ART ARE SUCH THAT THE SUBJECT MATTER AS A WHOLE WOULD
HAVE BEEN OBVIOUS AT THE TIME THE INVENTION WAS MADE TO A PERSON HAVING ORDINARY SKILL IN THE
ART TO WHICH SAID SUBJECT MATTER PERTAINS. PATENTABILITY SHALL NOT BE NEGATED BY THE MANNER IN
WHICH THE INVENTION WAS MADE.

THIS APPLICATION CURRENTLY NAMES JOINT INVENTORS. IN CONSIDERING
PATENTABILITY OF THE CLAIMS UNDER 35 U.S.C. 103(A), THE EXAMINER PRESUMES THAT
THE SUBJECT MATTER OF THE VARIOUS CLAIMS WAS COMMONLY OWNED AT THE TIME ANY

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INVENTIONS COVERED THEREIN WERE MADE ABSENT ANY EVIDENCE TO THE CONTRARY. APPLICANT IS ADVISED OF THE OBLIGATION UNDER 37 CFR 1.56 TO POINT OUT THE INVENTOR AND INVENTION DATES OF EACH CLAIM THAT WAS NOT COMMONLY OWNED AT THE TIME A LATER INVENTION WAS MADE IN ORDER FOR THE EXAMINER TO CONSIDER THE APPLICABILITY OF 35 U.S.C. 103© AND POTENTIAL 35 U.S.C. 102(E), (F) OR (G) PRIOR ART UNDER 35 U.S.C. 103(A).

CLAIMS 1-3, 6-22, 25-34, 61, 72-101 AND 103-109 ARE REJECTED UNDER 35 U.S.C. 103(A) AS BEING UNPATENTABLE OVER MCCORMICK ET AL. (A) AND STACK ET AL. (B) IN VIEW OF FRASER ET AL. (C).

MCCORMICK ET AL. TEACH VANCOMYCIN AS A WELL-KNOWN ANTIBIOTIC TO TREAT INFECTION CAUSED BY VARIOUS GRAM-POSITIVE BACTERIA (SEE TABLE I OF COLUMN 10).

STACK ET AL. TEACHES GLYCOPEPTIDE COMPOUNDS THAT ARE HOMOLOGS OF VANCOMYCIN ARE EFFECTIVE AGAINST GRAM-POSITIVE BACTERIA AND CONTROL RESISTANT BACTERIAL STRAINS, SUCH AS VANCOMYCIN-RESISTANT-ENTEROCOCCI (VRE). THE REFERENCE ALSO DISCLOSES THE VARIOUS BACTERIAL STRAINS THAT ARE INHIBITED OR DESTROYED BY THE HOMOLOGS (SEE TABLE 5). CLEARLY THE TWO REFERENCES TEACHES VANCOMYCIN AND HOMOLOGS OF VANCOMYCIN ARE EFFECTIVE AGAINST GRAM-POSITIVE BACTERIAL.

THE INSTANT INVENTION DIFFERS FROM THE CITED REFERENCES IN THAT THE CITED REFERENCES DO NOT TEACH THE ADDITION OF A SECOND AGENT EFFECTIVE AGAINST VANCOMYCIN RESISTANT BACTERIA. HOWEVER, THE SECONDARY REFERENCE, FRASER ET

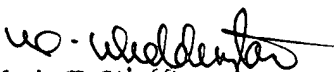
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AL., TEACHES COMPOUNDS DERIVED FROM THE APPLICANTS' COMPOUNDS OF CLAIMS 86 AND 103. THE COMPOUND IS INDOLICIDIN WHICH CAN BE COMBINED WITH GLYCOPEPTIDES, SUCH AS VANCOMYCIN, TO INHIBIT CELL WALL SYNTHESIS, PREVENT PEPTIDOGLYCAN ELONGATION., THUS RE-SENSITIZING VANCOMYCIN. FRASER ET AL. ALSO TEACHES THE INDOLICIDIN COMPOUNDS ARE EFFECTIVE AGAINST VARIOUS GRAM-POSITIVE BACTERIA AS DISCLOSED IN TABLE 5 IN COLUMN 31 AND SO ON.

CLEARLY, THE APPLICANTS ARE MERELY COMBINING KNOWN ANTIBIOTICS AND ANTIBACTERIAL AGENTS INTO A SINGLE COMPOSITION TO INCREASE ITS COMBINED AND ADDITIVE ANTIBACTERIAL EFFECTS IN THE ABSENCE OF EVIDENCE TO THE CONTRARY.

CLAIMS 1-3, 6-22, 25-34, 61, 72-101 AND 103-109 ARE NOT ALLOWED.

ANY INQUIRY CONCERNING THIS COMMUNICATION OR EARLIER COMMUNICATIONS FROM THE EXAMINER SHOULD BE DIRECTED TO EXAMINER K. WEDDINGTON WHOSE TELEPHONE NUMBER IS (703) 308-1235.


Kevin E. Weddington
Primary Examiner
Art Unit 1614

K. WEDDINGTON

DECEMBER 24, 2002